IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18181 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BHIKUBHAIN.MAKWANA - Petitioner(s)

Versus

STATEOFGUJARATTHR'SECRETARY & 2 - Respondent(s)

==========

Appearance :

MR MANISH J PATEL for Petitioner(s) : 1,
MR.L.B.DABHI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 03/10/2005

ORAL JUDGMENT

The petitioner joined Education Department as a typist on 25/9/1967. While he was serving in Education Department (respondent no.2), he applied for the post of Stenographer in judicial department viz. Metropolitan

Courts. On his being selected as a Stenographer, he gave one month notice to respondent No.2 for relieving him. However, he was not relieved. It appears that he was not relieved because dues of housing loan were outstanding against him. The petitioner therefore, on completion of one month period of the notice, joined the judicial department viz. the Metropolitan Court as a Stenographer on 16/5/1980.

2. The petitioner superannuated on 30/6/2003. He claimed the benefit of continuous service with both the departments i.e. continuous service from 25/9/1967 till date of retirement. That request has been turned down by order dated 29/1/2004 (Annexure – C). Thereafter, he made representation (Annexure – D) to the Law Secretary, Government of Gujarat. That representation also appears to have been rejected by the Government (Annexure – D) and hence, this petition.

3. Learned Advocate Mr.Patel for the petitioner submitted that in light of Government Resolution dated 25/1/1978 (Annexure – B), the petitioner's service with respondent No.3 ought to be considered as continuous and benefit ought to have been granted. Mr.Patel

submitted that the petitioner has cleared all his outstanding dues in respect of housing loan. The petitioner had to join the new service, as his request for relieving from service was not accepted and therefore, petition may be entertained.

4.This Court has taken close look to the annexures and the petition as well.

4.1It may be noted at the outset that the petitioner has not clearly mentioned in what manner his service with respondent No.3 came to an end. Fact certainly is revealed from the papers that he had given a notice for relieving him, which was not done and though, he was not relieved from his service, he joined the judicial department. In other words, he abandoned his first service with Education Department, which had a length of about 11 years (25/9/1967 to 31/10/1979). It also appears that he was with the Education Department till 31/10/1979, but joined judicial department on 16/5/1980, i.e. after laps of more than 6 months, as can be seen from Annexure – C and not disputed by the petitioner.

5. The petitioner has not annexed to this petition his

notice to respondent No.3 for relieving him nor has he produced his letter of appointment in the Metropolitan Court. It is therefore, not cleared as to whether, he had resigned from his first service or not. But, assuming for a moment, that he had not resigned, then also, the petitioner has abandoned his service without being relieved and without settling outstanding dues of housing loan. The housing loan appears to have been repaid on 17/4/2002, as can be seen from xerox copy of his service book produced on record.

6. Thus, even as per the petitioner's own case, because he was not relieved by respondent No.3 pursuant to his notice, he joined judicial department and thus, he has abandoned the service. Even, after abandonment, he joined the service after a laps of more than 6 months period. There is no clarifications as to what was his status from 1/11/1979 to 15/5/1980. This would make a clear case of break in service. No explanation is coming forward from the petitioner as to how his case would be covered by Annexure – B.

7. This Court is of the view that petitioner has not divulged all and complete information. From what is

divulged, the above picture emerges and therefore, extraordinary powers under Article 226 of the Constitution of India are not required to be exercised in favour of the petitioner. Petition stands dismissed.

(A.L.DAVE, J.)

sompura